



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,887	08/13/2001	Unterschrift des Erfinders	WEH205	5443

7590 06/29/2004

Horst M Kasper
13 Forest Drive
Warren, NJ 07059

EXAMINER

CHATTOPADHYAY, URMI

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 06/29/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,887

Applicant(s)

ERFINDERS ET AL.

Examiner

Urmi Chattopadhyay

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3738

DETAILED ACTION

Response to Amendment

1. The amendment filed 3/7/03 has been entered as Paper No. 7. Changes to the abstract and Figures 1 and 2 have been approved by the examiner. The amendment filed 6/18/03 has been entered as Paper No. 10; new claim 30 has been added. The amendment filed 10/23/03 (first filed 4/24/03) has been entered as Paper No. 12. The changes to the claims have been approved by the examiner and new claims 23-29 have been added. The amendment filed 11/25/03 has been entered as Paper No. 13; new claim 31 has been added. All pending claims, which are claims 1-31, are being considered for further examination on the merits.

Claim Objections

2. Claims 1-17 and 22-31 are objected to because of the following informalities: the preambles of the claims are to "cardiovascular prostheses" but the body of the claims makes reference to a prosthesis. The examiner suggests changing "cardiovascular prostheses" to --cardiovascular prosthesis-- so that the claim terminology is more consistent. Appropriate correction is required.

3. Claims 11 and 21 are objected to because of the following informalities: on line 4 of both claims, it appears that "another" should be changed to --other--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3738

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 1, 17, 24 and 27 are indefinite because it is unclear if the “permeable medium reservoir” is an alternative to both the inner and outer perfusion circuits, or if is an alternative to just the outer perfusion circuit.

6. Claim 5 recites the limitation "the chamber" in line 5. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 6 recites the limitations "the chamber" in line 4 and “the medium reservoirs” in line 10. There is insufficient antecedent basis for these limitations in the claim.

8. Claim 7 recites the limitations "the chamber" in line 4 and “the medium reservoirs” in line 11. There is insufficient antecedent basis for these limitations in the claim.

9. Claims 11 and 21 are indefinite because it is unclear what is meant by “the very medium reservoir”.

10. Claims 13, 22 and 23 are indefinite because it is unclear what is meant by “the realization” and “realized”.

11. Claim 14 recites the limitation "to be clamped" in line 2. There is insufficient antecedent basis for this limitation in the claim because the prosthesis is not required to be configured or adapted to be clamped and the process steps of the product claims 1 and 6, on which it depends, do not require clamping of the prosthesis.

Art Unit: 3738

12. Claim 18 recites the limitations "the pumping tubes" in line 3 of (d) and "the chamber" in line 4 of (d). There is insufficient antecedent basis for these limitations in the claim.

13. Claim 20, part (a) is confusing and should be rewritten following the Markush format for listing of elements.

14. Claim 20 is indefinite because it is unclear how part (b) can require two separate reservoirs, and then part (c) require that the reservoirs are one and the same.

15. Claim 30 is indefinite because it is unclear of what the pumping capacity is being varied.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

17. Claims 1-31 are rejected under 35 U.S.C. 102(a) as being anticipated by Dunkelman et al. (WO 97/49799 as cited in applicant's IDS).

Dunkelman et al. discloses a method for covering and cardiovascular prosthesis with endothelial cells with all the elements of claims 17-21 and 27-31. See Figure 4, page 3, lines 7-14, pages 7-8, lines 3-29 and page 11, lines 1-12 and pages 11-12, lines 28-3. The method includes apparatus comprising a chamber (46), pumping tube (58), adapters (33), cardiovascular prosthesis (26), reservoir (10), and pumping device (50). Because all of the method steps are met by Dunkelman et al., all of the structural limitations of the product claims of 1-16 and 22-26

Art Unit: 3738

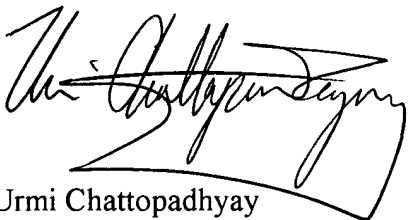
are also met. A cardiovascular prosthesis has an initial sub-confluent seeding of endothelial cells on the surface thereof and then forms a confluent monolayer of endothelial cells.

Response to Arguments

18. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Urmi Chattopadhyay whose telephone number is (703) 308-8510 and whose work schedule is Monday-Friday, 9:00am – 6:30pm with every other Friday off. The examiner's supervisor, Corrine McDermott, may be reached at (703) 308-2111. The group receptionist may be reached at (703) 308-0858.

Should the applicant wish to send a fax for official entry into the file wrapper the Group fax number is (703) 872-9306. Should applicant wish to send a fax for discussion purposes only, the art unit fax number is (703) 308-2708.



Urmi Chattopadhyay

Art Unit 3738



David J. Isabella
Primary Examiner